**National Anthem Bill 2016**

An Act to provide for the National Anthem and the Presidential Salute, to ensure that they should be treated with respect and dignity, to regulate their use in commercial advertising and in certain other commercial activities, and to provide for disbursement of funds received in respect of such uses.

**1. Short title and commencement**

(1) This Act may be cited as the National Anthem Act 2016.

(2) This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

**2. Definitions**

In this Act—

“Act of 2000” means the Copyright and Related Rights Act, 2000;

“Anthem” means the National Anthem provided for in section 3;

“Defence Forces” means the forces raised and maintained under the Defence Act, 1954;

“Garda Síochána” means the force continued in being by the Garda Síochána Act 2005;

“local authority” has the meaning given to it by section 2(1) of the Local Government Act, 2001 as amended by section 5(1) of the Local Government Reform Act 2014;

“Minister” means the Minister for Finance; and

“Salute” means the Presidential Salute provided for in section 4.

**3. National Anthem**

(1) The music of the National Anthem shall be the chorus of “The Soldier’s Song” composed by Patrick Heeney (1881-1911), and the official arrangement of the music shall be as set out in Schedule 1.

(2) The words of the National Anthem in the Irish language shall be the chorus of “Amhrán na bhFiann” composed by Liam Ó Rinn (1886-1943), and the official text of those words shall be as set out in Schedule 1.

(3) The words of the National Anthem in the English language shall be the chorus of “The Soldier’s Song” composed by Peadar Kearney (1883-1942), and the official text of those words shall be as set out in Schedule 1.

(4) The music and words set out in Schedule 1 pursuant to this section are hereby designated as the National Anthem.

(5) The music and words of the National Anthem set out in Schedule 1 are hereby recognised to be in the public domain.

**4. Presidential Salute**

(1) The Presidential Salute shall consist of the music of the first four bars of the Anthem followed by the music of last five bars of the Anthem.

**5. Respect and dignity**

(1) The Anthem and Salute should be performed and treated with respect and dignity; and they should not be performed or treated with scorn or derision.

(2) Subject to this section, any person performing the Anthem should do so according to the music and words set out in Schedule 1, and alternative music or words should not be substituted for any of the music or words set out in Schedule 1; provided that—

(a) the music set out in Schedule 1 may be performed without the accompanying words in either language, and

(b) the words in either language set out in Schedule 1 may be sung or said without the accompanying music.

(3) For the purposes of performance, the Anthem or Salute may be arranged in any manner that is in keeping with the respect and dignity due to them; provided that—

(a) neither the Anthem nor the Salute should be incorporated into any other composition or medley,

(b) every arrangement of the Anthem should accurately reflect the music and words set out in Schedule 1, and no alternative words should be substituted for the words set out in Schedule 1, and

(c) every arrangement of the Salute should accurately reflect the music set out in Schedule 1.

(4) The Minister may by order provide that an arrangement satisfies the terms of subsection (3).

(5) Any person performing an arrangement of the Anthem or Salute may do so according either to any arrangement approved by the Minister pursuant to subsection (4) or to any other arrangement that satisfies the terms of subsection (3).

(6) The Anthem or Salute may be performed on any appropriate occasion, such as important public ceremonies, significant sporting occasions and important community events; and, subject to his section, the organiser of the occasion may choose when during that occasion the Anthem or Salute is played.

(7) The Anthem should normally be performed—

(a) for the arrival on formal occasions of Úachtarán na hÉireann,

(b) on formal occasions during State Visits by Heads of State, Official visits by Heads of Government, or visits to Ireland of members of foreign Governments, and

(c) at formal ceremonies or commemorations in the State.

(8) The Salute should normally be performed, if the Anthem is not to be, to mark the arrival or presence of Úachtarán na hÉireann at a formal occasion.

(9) The Minister may by order prescribe other formal occasions upon which the Anthem or Salute should normally be performed.

(10) During a performance of the Anthem or Salute—

(a) current members of the Defence Forces or of An Garda Síochána who are present and in uniform but who are not discharging some official function should, if practicable, salute throughout the performance,

(b)current members of the Defence Forces or of An Garda Síochána who are present but are neither in uniform nor discharging some official function may, if practicable, salute throughout the performance,

(c)former members of the Defence Forces or of An Garda Síochána who are present and not discharging some official function may, if practicable, salute throughout the performance,

(d) all persons who are present but are neither saluting nor discharging some official function should, if practicable, remove any headgear and stand at attention throughout the performance, and

(e) all Irish citizens are encouraged to sing the Anthem when it is being performed.

(11) Those who are not present at a performance of the Anthem or Salute, but who are instead receiving an electronic communication thereof, should of course treat the Anthem or Salute with respect and dignity but need neither salute nor stand at attention, and need not sing the Anthem if it is being performed.

(12) When the Anthem is preformed at the same occasion as the anthem of another nation, the anthem of the other nation should normally be performed first.

**6. Liability**

(1) The principles of respect and dignity set forth in section 5 are intended only for the general guidance of the People, and it is therefore left to their good sense not to indulge in disrespectful or undignified performances or treatment of the Anthem or Salute.

(2) Subject to sections 7, 8 and 9—

(a) the principles of respect and dignity set forth in section 5 shall not be cognisable by any Court, and there shall be ] absolutely no sanction, liability or penalty whatsoever for breach of the principles of respect and dignity set forth in section 5, and

(b) in particular, nothing in section 5 shall—

(i) be construed to give rise to any criminal liability, or

(ii) operate to confer a cause of action on any person against any other person in respect of that other person’s performance or treatment of the Anthem or Salute.

**7. Disrupting a performance**

(1) This section applies where a court is determining any sentence to be imposed on a person convicted of an offence provided for in the Criminal Justice (Public Order) Act, 1994.

(2) If the offence was committed in the circumstances provided for in subsection (3), then the court—

(a) must treat that fact as an aggravating factor, and

(b) must state in open court that the offence was so aggravated.

(3) Those circumstances are that, in committing the offence, the person convicted of the offence either—

(a) prevented or disrupted, or attempted to prevent or disrupt, a performance of the Anthem or Salute pursuant to subsections (7)-(9) of section 5, or

(b) prevented or disrupted, or attempted to prevent or disrupt, any performance of the Anthem or Salute by a band of the Defence Forces or An Garda Síochána or both, whether or not it is a performance pursuant to subsections (7)-(9) of section 5.

**8. Advertising and other commercial activities**

(1) The official arrangement of the music of “The Soldier’s Song” composed by Patrick Heeney (1881-1911) shall be as set out in Schedule 2; provided that it shall include the official arrangement of the music of the Anthem as set out in Schedule 1.

(2) The official text of the words of “Amhrán na bhFiann” composed by Liam Ó Rinn (1886-1943) shall be as set out in Schedule 2; provided that it shall include the official text of the words of the Anthem in the Irish language as set out in Schedule 1.

(3) The official text of the words of “The Soldier’s Song” composed by Peadar Kearney (1883-1942) shall be as set out in Schedule 2; provided that it shall include the official text of the words of the Anthem in the English language as set out in Schedule 1.

(4) The music and words set out in Schedule 2 are hereby recognised to be in the public domain.

(5) For the purposes of this section, the “protected works” are the Anthem, the Salute, any arrangement of the Anthem or Salute approved by the Minister pursuant to subsection (4) of section 5, and the music and words set out in Schedule 2.

(6) Subject to subsection (9), any person who wishes

(a) for the purposes of any commercial advertisement, or

(b) for commercial activities in the ordinary course of business,

to make use of any of the protected works for profit, shall seek the prior written consent of the Minister, notwithstanding that the music and works set out in Schedules 1 and 2 are in the public domain.

(7) For the purposes of subsection (6), and subject to subsection (7) of section 9, “commercial activities” means commercial sound recordings, commercial broadcasts, commercial public performances, commercial publications, and commercialcommunications to the public.

(8) The Minister may by order make regulations for the purposes of subsections (6) and (7)—

(a) making further provision for the commercial advertisements and commercial activities for which the prior written consent of the Minister shall be necessary,

(b) prescribing information to be supplied to the Minister,

(c) setting out the circumstances in which, and the conditions upon which, consent may be granted,

(d) establishing scales of charges (if any) to be levied in consideration of any consent granted by the Minister, and

(e) notwithstanding section 1, appointing the date on which subsections (6) and (7) shall come into force.

(9) The consent of the Minister shall not be necessary, and no charge shall be levied or payable, in respect of a use of any of the protected works which—

(a) is a use by the State, by the Government, by the Oireachtas, by a body established by or under statute, by the Defence Forces, or by An Garda Síochána,

(b) is a use for the purposes of subsections (7) to (9) of section 5,

(c) is a non-commercial, charitable, educational, personal, private or religious use,

(d) is a use by a club, trust, or unincorporated association,

(e) is a use which, immediately before copyright expired in any work set out in Schedule 1 or 2, could lawfully have been done without the licence, or further licence, of the owner of the copyright in any such work,

(f) is a use (other than a parody) which, if copyright still subsisted in any work set out in Schedule 1 or 2, could, by virtue of any provision of the Act of 2000, as amended, be done without infringing copyright,

(g) is a use which was done or is being done on foot of arrangements or agreements made before the passing of this Act, or

(h) is contained in an advertisement broadcast at the request of the Referendum Commission established pursuant to the Referendum Act, 1988, in relation to a matter referred to in section 3 of that Act concerning a referendum.

(10) The matters mentioned in subsection (9) are not commercial activities for the purposes of subsections (6) and (7).

(11) Where the consent of the Minister is sought

(a) pursuant to paragraph (a) of subsection (6) for an advertisement advertising a matter mentioned in subsection (9), or

(b) pursuant to paragraph (b) of subsection (6),

and the Minister is satisfied that the use of the protected work for which consent is sought is consistent with the purpose and substance of section 5, then the consent of the Minister shall not be unreasonably withheld.

(12) Any local authority that requires a licence for the performance of an activity that takes place on public or private land within the area of the said local authority, shall not—

(a) apply any requirement to obtain such a licence for the performance of the Anthem or Salute; or

(b) impose any sanction, liability or penalty upon any individual, group or organization for the un-licensed performance of the Anthem or Salute.

**9. Remedies**

(1) For the purposes of this section, a “non-compliant advertisement” is an advertisement

(a) for which the prior written consent of the Minister is required pursuant to subsection (6)(a) of section 8, and

(b) in respect of which, either

(i) the said prior written consent of the Minister has not been obtained, or

(ii) the said prior written consent of the Minister has been obtained, but the applicant who had been granted such consent has not provided information which was required by the Minister, or has not satisfied a condition which was prescribed by the Minister, or has not paid a charge which was levied by the Minister.

(2) (a) No non-compliant advertisement shall be published or broadcast.

(b) A publisher or broadcaster which is satisfied that an advertisement is a non-compliant advertisement shall decline to publish or broadcast the said advertisement.

(c) A publisher or broadcaster which is not satisfied that an advertisement is not a non-compliant advertisement may decline to publish or broadcast the said advertisement.

(3) Where it appears to the Minister that a non-compliant advertisement is likely to be published or broadcast, then the Minister may apply to the Court for an order to restrain or prevent any such publication or broadcast of the said advertisement.

(4) Where a non-compliant advertisement has been published or broadcast, then the Minister may apply to the Court for an order to restrain or prevent any further publication or broadcast of the said advertisement.

(5) Section 48 of the Broadcasting Act 2009 is amended, in subsection (1)—

(a) at the end of paragraph (d), by substituting “, and” for “.”, and

(b) by inserting after paragraph (d) the following

“(e) a complaint that on an occasion specified in the complaint, a broadcaster broadcast an advertisement that is a non-compliant advertisement for the purposes of subsection (1) of section 9 of the National Anthem Act 2016.”

(6) For the purposes of this section, references to advertisements shall be read as including references to advertising matter contained in sponsored programmes, that is to say, in programmes supplied to a broadcaster for advertising purposes by or on behalf of an advertiser.

(7) For the purposes of this section, a “non-compliant commercial activity” is a commercial activity

(a) for which the prior written consent of the Minister is required pursuant to subsection (6)(b) of section 8, and

(b) in respect of which, either

(i) the said prior written consent of the Minister has not been obtained, or

(ii) the said prior written consent of the Minister has been obtained, but the applicant who had been granted such consent has not provided information which was required by the Minister, or has not satisfied a condition which was prescribed by the Minister, or has not paid a charge which was levied by the Minister.

(8) Where it appears to the Minister that a non-compliant commercial activity is likely to occur, then the Minister may apply to the Court for an order to restrain or prevent the occurrence of any such commercial activity.

(9) Where a non-compliant commercial activity has occurred, then the Minister may apply to the Court for an order to restrain or prevent any further such commercial activity, or for damages, or for both.

(10) Section 128 of the Act of 2000 shall apply to an action for damages pursuant to subsection (9), as though that action were an action for infringement of copyright.

(11) An order under this section may be made on such terms as the Court thinks appropriate, and the Court may discharge or vary an order made under this section.

(12) The Court may grant an interim order pending the determination of an application under this section.

(13) The Minister may apply ex parte to the Court for an interim order under this section and the Court may grant an order in such a case where the Court considers it necessary to do so in order to achieve the purposes of this section, including (in particular) in order to preserve the availability of any property, information, record or other thing.

(14) The power of the Court to make an order under this section restraining a person from engaging in conduct may be exercised—

(a) whether or not it appears to the Court that the person intends to repeat, or to continue, the conduct, or

(b) whether or not the person has previously engaged in that kind of conduct.

(15) The power of the Court to make an order under this section requiring a person to do an act may be exercised—

(a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act, and

(b) whether or not the person has previously refused or failed to do that act.

(16) Where an order is made under this section, it shall not operate to prohibit the reporting of the making of that order.

(17) In this section

(a) “the Court” means the High Court, and

(b) “order” means—

(i) an interim order,

(ii) an interlocutory order, or

(iii) a permanent order.

**10. Disbursement of funds**

(1) Charges and damages received by the Minister by virtue of this Act shall be disbursed pursuant to section 41 of the National Lottery Act 2013 as though the said charges and damages were paid into the Central Fund pursuant to section 44(3)(c) of that Act from the National Lottery Fund established under section 8 of the National Lottery Act, 1986.

**Schedule 1**

[This should contain the sheet music currently available from the Taoiseach’s website <http://taoiseach.gov.ie/eng/Historical\_Information/The\_Constitution/Irish\_Nat\_Anthem\_sheet\_music.pdf>

with the dates for Liam Ó Rinn corrected to read “1886-1943”, and this corrected sheet music should then be made available at that link].

**Schedule 2**

[To be provided].